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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/735,809	12/16/2003	Jay Miazga	000309-00259	2862
27557	7590	07/12/2007		
BLANK ROME LLP 600 NEW HAMPSHIRE AVENUE, N.W. WASHINGTON, DC 20037			EXAMINER JOHNSON, SHEVON ELIZABETH	
			ART UNIT 3766	PAPER NUMBER
			MAIL DATE 07/12/2007	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

ED

<b>Office Action Summary</b>	<b>Application No.</b> 10/735,809	<b>Applicant(s)</b> MIAZGA ET AL.	
	<b>Examiner</b> Shevon E. Johnson	<b>Art Unit</b> 3766	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 18 April 2007.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-42 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 3-7, 9-20, 23-29 and 32-42 is/are allowed.
- 6) ☒ Claim(s) 1, 2, 8, 21, 22, 30 and 31 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |                                                                                                            |                                                                                         |
|------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____                                                |

### DETAILED ACTION

1. This action is in response to applicant's amendment received on 4/18/2007.

#### *Response to Arguments*

2. **Applicant's remarks have been fully considered but they are deemed moot in view of the new grounds of rejection.** Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

#### *Claim Rejections - 35 USC § 102*

3. **The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:**

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. **Claims 1-2, 8, 21-22 and 30-31 are rejected under 35 U.S.C. 102(e) as being anticipated by Leonard et al. (U.S. Patent No. 6,549,797).**

In regards to claim 1, Leonard discloses an apparatus for percutaneous application, comprising: a housing; a percutaneous probe for electrotherapy having a sharp end and being positioned within the housing, the percutaneous probe movable relative to the housing between a stowed position and at least one of a first deployed position and a second deployed position, with the percutaneous probe projecting

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from the housing by a first distance when in the first deployed position, and with the percutaneous probe projecting from the housing by a second distance greater than the first distance when in the second deployed position; and a depth control device operatively coupled to the percutaneous probe, the depth control device having a first configuration to allow the percutaneous probe to be moved to the first deployed position, the depth control device having a second configuration to allow the percutaneous probe to be moved to the second deployed position (col. 3, line 16 – col. 4, line 35; figs. 3-8).

In regards to claim 2, Leonard discloses an apparatus wherein the depth control device includes a pre-adjustable portion configured to be movable between a first stop position and a second stop position without moving the percutaneous probe, and wherein the percutaneous probe is movable to the first deployed position when the pre-adjustable portion is in the first stop position, the percutaneous probe movable to the second deployed position when the pre-adjustable portion is in the second stop position (col. 3, line 16 – col. 4, line 35).

In regards to claim 8, Leonard discloses an apparatus comprising: a housing; a first percutaneous probe for electrotherapy positioned within the housing, the first percutaneous probe having a sharp end and a first percutaneous length, the first percutaneous probe movable relative to the housing between a first stowed position and a first deployed position; and a second percutaneous probe for electrotherapy positioned within the housing simultaneously with the first percutaneous probe, the second percutaneous probe having a sharpened end and a second percutaneous length, the second percutaneous probe movable relative to the housing between a second stowed position and a second deployed position (col. 3, line 16 – col. 4, line 35).

In regards to claim 21, Leonard discloses an apparatus comprising: a housing having an attachment device configured to be releasably attached to a recipient's skin, the housing further having an external housing surface extending away from the attachment device and facing outwardly transverse to the attachment device; a percutaneous probe for electrotherapy having a sharp end and disposed within the housing, the percutaneous probe movable relative to the housing between a stowed position and at least one deployed position; an actuator movably disposed within the housing, the actuator carrying the percutaneous probe and having a receiving portion; and an actuator tool having an engaging portion

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positioned to releasably engage the receiving portion of the actuator, the actuator being movable between a first position and a second position, with the percutaneous probe in its stowed position when the actuator tool is in its first position and with the percutaneous probe in its deployed position when the actuator tool is in its second position, and wherein at least a portion of the housing surface is exposed when the actuator tool is in the first position and covered by the actuator tool when the actuator tool is in the second position (col. 3, line 16 – col. 4, line 35).

In regards to claim 22, Leonard discloses an apparatus wherein the housing includes an exit portion through which the percutaneous probe extends when in the deployed position, and wherein the surface of the housing faces transverse to the exit portion, further, wherein the actuator tool includes a grip portion configured to receive an operator's hand, and wherein the grip portion is positioned adjacent to the surface of the housing when the actuator tool is in the second position (col. 3, line 16 – col. 4, line 35).

In regards to claim 30, Leonard discloses a method for deploying a percutaneous probe for electrotherapy, comprising: supporting a percutaneous probe housing having a first percutaneous probe with a sharp end and a first percutaneous length, the first percutaneous probe movable relative to the housing between a first stowed position and a first deployed position, the housing further having a second percutaneous probe with a sharp end and a second percutaneous length, the second percutaneous probe movable relative to the housing between a second stowed position and a second deployed position; selecting at least one of the first and second percutaneous probes; and deploying the at least one percutaneous probe into a recipient's tissue.

In regards to claim 31, Leonard discloses a method for deploying a percutaneous probe, comprising: supporting a percutaneous probe housing having a first percutaneous probe with a sharp end and a first percutaneous length, the first percutaneous probe movable relative to the housing between a first stowed position and a first deployed position, the housing further having a second percutaneous probe with a sharp end and a second percutaneous length, the second percutaneous probe movable relative to the housing between a second stowed position and a second deployed position; selecting at least one of the first and second percutaneous probes; and deploying the at least one percutaneous probe into a recipient's tissue; wherein the first and second percutaneous probes are carried by a rotatable magazine, and wherein the method further includes rotating the magazine to select one of the percutaneous probes.

***Allowable Subject Matter***

5. Claims 3-7, 9-20, 23-29 and 32-42 allowed.

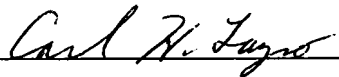
***Conclusion***

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Shevon Johnson whose telephone number is (571) 272-2010. The examiner can normally be reached on M-F (8 a.m. - 4:30 p.m.).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Angela Sykes can be reached on (571) 272-4955. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Shevon Johnson, Art Unit 3766

  
\_\_\_\_\_  
CARL LAYNO  
PRIMARY EXAMINER